IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4996 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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TULSI GALABHAI PARGHI

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 4996 of 2002

MR BC DAVE for Petitioner No. 1

MR HH PATEL Ld. AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 09/07/2002

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India the petitioner-detenu has challenged the legality and validity of the detention

order passed by the Police Commissioner Rajkot City dated 17.4.2002 in exercise of powers vested under him by sub-section 3(2) of the Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as 'the PASA Act').

According to the detaining authority, the activity of the petitioner is dangerous and prejudicial to the maintenance of public order . The petitioner is a habitual thief and he has been found involved in six serious criminal offences against the property punishable under sec. 447, 454, 380 of IPC etc. The table of the cases registered against the petitioner is mentioned in the grounds of detention served to the detenu on 17.4.2002. The order under challenge has been executed when the petitioner was in judicial custody as he was arrested for the offences registered with B-Division POlice Station on 9.4.2002.

It would be appropriate to mention the table of criminal cases registered against the detenu.

Sr.No.	Police Station	CR NO. & Date	Mudammal theft
1.	B-Div. Police Station	698/2001 9.11.2001	Spare parts of Tin Factory
2.	B-Div. Police Station	258/2002 9.4.2002	Ceiling fan No.1 & Calculator
3.	Bhaktinagar Police station	43/2001 25.1.2001	Colour TV of BPL Nos.1
4.	Bhaktinagar Police station	27/2002 17.1.2002	Colour TV of AIWA Company
5.	Bhaktinagar Police station	114/2002 16.3.2002	Scrape of Brass weight 45 kg.
6.	Malaviyanagar Police Station	390/2001 6.9.2001	Wrist watch nos. 1, and other watches sold away to the misc. customers & other men.

The above table clearly reveals that the petitioner must be a habitual thief and has lifted some articles during the night hours. Considering the nature

of the offence, the total amount involved and other set of facts available on record, it is argued that the allegations against the detenu even if accepted as they are, can be said to be prejudicial to the maintenance of law and order and not public order.

The sharp distinction between the maintenance of public order and law and order has been drawn by the Apex Court in more than one case and has been followed by this court in number of cases. This Court while dealing with Special Criminal Application No. 1681 of 1992, held that the activity of the detenu cannot be said to be prejudicial to the maintenance of public order. In this case, the petitioner-detenu was found involved in 27 different criminal offences punishable under sec. 380, 379 of IPC etc. The subsequent decision of this Court in the case of Ashok Jivraj reported in 2000(1) GLR p. 816, wherein this Court has, by accepting the same ratio has quashed the order of detention.

It is rightly submitted that this very ratio would squarely applicable to the facts of the present case. It is apparent that the activity of the petitioner-detenu was not prejudicial to the maintenance of public order than there was no scope for the detaining authority to exercise the powers under sec. 3 of the PASA Act.

The statements of two witnesses recorded by the sponsoring authority and placed before the detaining authority does not transpires confidence in the mind of the Court. The averments in this statement even if is accepted as they are, the same can be said to be prejudicial to the maintenance of law and order and not public order because the same are individual wrong committed qua that particular person by the detenu.

The order of detention has been challenged on number of grounds but as the order is found bad and violative of the Constitutional safe guards enshrined in the Article 22(5) of the Constitution of India, it is not necessary to discuss the other grounds of challenge. So, on the sole ground, this petition is requires to be allowed.

In the result, this petition is allowed. The impugned order of detention dated 17.4.2002 passed by Police Commissioner, Rajkot City is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if he is not required to be detained in any other case. Rule is made absolute. Direct service

permitted.

(C.K. BUCH, J.)
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